IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.5074 of 2006
TO
FIRST APPEAL No.5080 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPECIAL LAND ACQUISITION OFFICER & ANR. - Appellants
Versus
RAGHAVBHAI LAXMANBHAI - Respondent

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Appearance :

First Appeal Nos.5074 to 5077 of 2006
MR SS SHAH, GP for Appellants.
MR GM AMIN for Respondents.

First Appeal Nos.5078 to 5080 of 2006
MS TANUJA N. KACHCHHI, AGP for Appellants.
MR GM AMIN for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 18/12/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.G.M.Amin, learned counsel, waives service of notice on behalf of the respondent(s) in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged legality of common judgment and award dated October 29, 2005 rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case Nos.953 to 959 of 1998 by which the claimants have been awarded additional amount of compensation at the rate of Rs.61/- per square metre for their acquired lands over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.50 paise per square metre for irrigated lands and Re.1/- per square metre for non-irrigated lands by his award dated May 30, 1996.

3. The Executive Engineer, Narmada Yojna,

Saurashtra Branch, Division No.2/4, Bhavnagar, proposed to the State Government to acquire the lands of Dhandhuka Town, Taluka: Dhandhuka, District: Ahemdabad, for the purpose of construction of Narmada Canal. On perusal of the said proposal, the State Government was satisfied that the lands, which were mentioned in the said proposal, were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on January 6, 1993. The landowners were thereafter served with the notices as required by Section 4(1) of the Act. On service of notices, the landowners opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated under Section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of Dhandhuka Town, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of

the Act was made, which was published in the official gazette on June 1, 1994. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.1.50 paise per square metre for irrigated lands and Re.1/- per square metre for non-irrigated lands, by his award dated May 30, 1996. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Navrangpura, where they were registered as Land Acquisition Case Nos.953 of 1998 to 959 of 1998.

4. On behalf of the claimants, witness Kantilal Lalubhai Rami was examined at Exhibit 20. The witness claimed in his evidence that the lands acquired were highly fertile. In order to substantiate his claim, the witness produced 7/12 extracts relating to the lands acquired at Exhibits 15 to 18. The witness further maintained before the Court that each claimant was earning Rs.40,000/- per year *per vigha* from the sale of agricultural produces such as cotton, cumin-seed, wheat, etc. After mentioning that Dhandhuka Town was fully developed and is situated on Ahmedabad-Bhavnagar State Highway, it was mentioned by him that from this very town the lands were acquired earlier for public purpose and that those lands were situated quite near the lands acquired in the instant case. The witness produced previous award of the Reference Court relating to the lands acquired from this town at Exhibit 14. Though this witness was cross-examined on behalf of the appellants, nothing substantial could be elicited.

5. On behalf of the appellants, witness Abdulbhai Aslamji Patel, who was then discharging

duties as Deputy Executive Engineer, was examined at Exhibit 23. Though it was mentioned by the witness that the Special Land Acquisition Officer had determined the amount of compensation payable to the claimants after taking into consideration the relevant factors, he had to admit in the cross-examination that he had had no personal knowledge regarding the lands acquired and was deposing before the Court on the basis of official record available with him.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very town produced at Exhibit 14 was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. The Reference Court noticed that on the basis of previous award of the Reference Court, the claimants would be entitled to compensation at the rate of Rs.52.50 Paise per square metre. The Reference Court also noticed that notification under Section 4(1) of the

Act, which was issued for acquiring the lands previously from this town, was published in the official gazette on January 7, 1991 whereas in the instant case, it was published on January 6, 1993 and, therefore, in view of time-gap between the publications of two notifications, the claimants would be entitled to reasonable rise in price of the lands at the rate of 10% per annum. In ultimate analysis, the Reference Court has awarded additional compensation to the claimants at the rate of Rs.61/- per square metre by the impugned award giving rise to the above-numbered appeals.

7. This Court has heard Ms.Tanuja N. Kachchhi, learned Assistant Government Pleader for the appellants, as well as Mr.G.M.Amin, learned counsel for the respondent(s) in each appeal. This Court has also considered the paper-book supplied by the learned counsel for the respondents, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

8. Though the witness for the claimants could

not make his assertion good that each claimant was earning Rs.40,000/- per year per *vigha* from the sale of agricultural produces, there is no manner of doubt that the lands acquired were highly fertile and that different crops were being raised on the lands acquired. This fact stands amply established by the contents of 7/12 extracts relating to the lands acquired, which were produced by the witness at Exhibits 15 to 18. The evidence does not indicate that the enhanced compensation was claimed by the claimants either on the basis of yield or comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court of this very town, which was produced at Exhibit 14. A perusal of Exhibit 14 makes it clear that the lands of Dhandhuka town were acquired for the public purpose of construction of residential and non-residential quarters pursuant to publication of notification under Section 4(1) of the Act in the official gazette on January 7, 1991. Therein the Special Land Acquisition Officer had offered compensation to the claimant at the rate of Rs.33.30 paise per square metre by his award dated April 8,

1993. Feeling aggrieved, the claimant had sought reference. Accordingly, the reference was made to the District Court, Ahmedabad (Rural), which was registered as Land Acquisition Case No.775 of 1995. On behalf of the claimant, witness Ajamahmed Adambhai was examined at Exhibit 30 whereas on behalf of the acquiring authority, witness Narendrabhai Narandas Bhavsar was examined at Exhibit 34. Therein also, the previous award of the Reference Court relating to the lands of Dhandhuka town rendered in Land Acquisition Case No.342 of 1983 was relied upon and the claimant was awarded additional amount of compensation at the rate of Rs.19.20 paise per square metre by judgment and award dated April 24, 2002. It is well-settled that the previous award of Reference Court relating to a village, which has attained finality, can be taken as a good piece of evidence for the purpose of determining the market value of the similar lands acquired from the same village later on. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of this very town for the purpose of

determining the market value of the lands acquired in the instant case more particularly when the assertion made by the witness for the claimants in the instant case that the land acquired previously was situated near the lands acquired in the instant case could not be demonstrated to be untrue. In the earlier case also, the land acquired was irrigated land and in the instant case also irrigated lands have been acquired for public purpose. Therefore, the base adopted by the Reference Court for determining the market value of the lands acquired in the instant case cannot be considered to be erroneous. Further, it is well-settled that if there is time-gap between the publication of notifications issued under Sections 4(1) of the Act, the claimants would be entitled to reasonable rise in price of the lands at the rate of 10% per annum. In previous case, notification under Section 4(1) of the Act was published in the official gazetted on January 7, 1991 whereas in the instant case, it was published on January 6, 1993 and as there was time-gap of about two years, the claimants would be entitled to reasonable rise in price of the lands at the rate of 10% per annum. The

ultimate calculation of the amount made by the Reference Court, which is found payable to the claimants could not be demonstrated to be erroneous by the learned counsel for the appellants. On re-appreciation of evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court to which well-settled principles of law have been applied. The learned Assistant Government Pleader has failed to persuade this Court to take a view different than the one taken by the Reference Court on appreciation of the evidence. Therefore, the appeals, which do not have merits, deserve to be dismissed.

For the foregoing reasons, the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra